

1 PAUL L. REIN, Esq. (SBN 43053)
2 CELIA McGUINNESS, Esq. (SBN 159420)
3 LAW OFFICES OF PAUL L. REIN
200 Lakeside Drive, Suite A
4 Oakland, CA 94612
Telephone: 510/832-5001
Facsimile: 510/823-4787

5 Attorneys for Plaintiff
SEBASTIAN DEFRANCESCO

6 CALEB SEQUOIA BASKIN, SB No. 226132
7 csbaskin@baskinggrant.com
8 REBECCA J. FOWLER, SB No. 228852
rjfowler@baskinggrant.com
9 BASKIN & GRANT, LLP
730 MISSION STREET
10 SANTA CRUZ, CALIFORNIA 95060-3615
Tel: (831) 425-8999
Fax: (831) 425-8853

11 Attorneys for Defendants 2335 MISSION
12 CENTER ONE, LLC, 2335 MISSION CENTER
13 TWO, LLC, 2335 MISSION CENTER THREE,
LLC, and 2335 MISSION CENTER FOUR, LLC

14
15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17
18 SEBASTIAN DEFRANCESCO,

19 Plaintiff,

20 vs.

21 NEW LEAF COMMUNITY MARKETS,
22 INC.; 2335 MISSION CENTER ONE, LLC;
2335 MISSION CENTER TWO, LLC; 2335
MISSION CENTER THREE, LLC; 2335
MISSION CENTER FOUR, LLC; and DOES
1-10, Inclusive,

24 Defendants.
25

CASE NO. C09-00223 SI

**CONSENT DECREE AND [PROPOSED]
ORDER**

Case Assigned to Hon. Susan Illston

Case Filed: January 16, 2009
Trial Date: None set

26
27 **CONSENT DECREE AND ORDER**

28 1. Plaintiff SEBASTIAN DEFRANCESCO ("Plaintiff") filed a Complaint in this

1 action on January 16, 2009, to obtain recovery of damages for his alleged discriminatory
 2 experiences, denial of access, denial of civil rights, and to enforce provisions of the Americans
 3 with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101 et seq., and California civil rights laws
 4 against Defendants 2335 MISSION CENTER ONE, LLC, 2335 MISSION CENTER TWO, LLC,
 5 2335 MISSION CENTER THREE, LLC, and 2335 MISSION CENTER FOUR, LLC (the
 6 "Landlord Defendants"), and NEW LEAF COMMUNITY MARKETS, INC. (collectively with
 7 the Landlord Defendants as "Defendants"), relating to the condition of the public accommodations
 8 at New Leaf Market and its adjacent parking facilities, located at 2351 Mission Street, Santa Cruz,
 9 California. Plaintiff has alleged that Defendants violated Title III of the ADA and §§51, 52, 54,
 10 54.1, 54.3 and 55 of the California Civil Code, and §§19955 et seq. of the California Health and
 11 Safety Code, by failing to provide full and equal access to the facilities at New Leaf Market.

12 2. Defendants deny the allegations in the Complaint and by entering into this Consent
 13 Decree and Order do not admit liability to any of the allegations in Plaintiff's Complaint filed in
 14 this action. The parties hereby enter into this Consent Decree and Order for the purpose of
 15 resolving this lawsuit without the need for protracted litigation, and without the admission of any
 16 liability.

17 JURISDICTION

18 3. The parties to this Consent Decree and Order agree that the Court has jurisdiction
 19 of this matter pursuant to 28 USC §1331 for alleged violations of the ADA, 42 U.S.C. §§12101 et
 20 seq. and pursuant to supplemental jurisdiction for alleged violations of California Health & Safety
 21 Code §§19955 et seq., including §19959; Title 24 California Code of Regulations; and California
 22 Civil Code §§51, 52, 54, 54.1, 54.3 and 55.

23 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
 24 parties to this Consent Decree and Order agree to entry of this Order to resolve all claims raised in
 25 the Complaint filed with this Court. Accordingly, they agree to the entry of this Order without
 26 trial or further adjudication of any issues of fact or law concerning Plaintiff's claims.

27 WHEREFORE, the parties to this Consent Decree and Order hereby agree and stipulate to
 28 the Court's entry of this Consent Decree and Order, which provides as follows:

SETTLEMENT OF INJUNCTIVE RELIEF

5. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject Complaint. The parties agree that there has been no admission or finding of liability or violation of the ADA and/or California civil rights laws, and this Consent Decree and Order should not be construed as such.

6. Remedial Measures: The corrective work agreed upon by the parties is as set forth in **Attachment A**. Items A-K shall be performed by the Landlord Defendants. No corrective work shall be required in the old New Leaf Market location. However, if the old New Leaf Market location is leased and utilized as a public accommodation, the Landlord Defendants shall require that the premises are compliant with the applicable standards and specifications for disabled access as set forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines.

7. The parties agree and stipulate that the corrective work will be performed in compliance with the standards and specifications for disabled access as set forth in the California Code of Regulations, Title 24-2 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are specifically agreed to in this Consent Decree and Order.

8. Timing of Injunctive Relief: The Landlord Defendants will complete all work within six months of the date of notice of entry of this order. In the event that unforeseen difficulties prevent Defendants from completing any of the agreed upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in writing within 15 days of discovering the delay. Defendants or their counsel will notify Plaintiff's counsel when the corrective work is completed, and, in any case, will provide a status report no later than 120 days from the entry of this Consent Decree and Order.

DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES AND COSTS

9. The parties have reached an agreement regarding Plaintiff's claims for damages, attorney fees, litigation expenses and costs. Defendants will collectively pay the amount of \$10,000.00 within 15 days of entry of this order by the Court in full satisfaction of Plaintiff's

1 claims for all damages, including personal injury, civil rights, and all other forms of damages.
 2 Defendants will collectively pay the amount of \$26,802.00 in full satisfaction of Plaintiff's claims
 3 for attorney fees, litigation expenses, and costs, within 15 days of entry of this order by the Court.
 4 Payments shall be made by check payable to "Paul L. Rein in Trust for Sebastian DeFrancesco," ,
 5 as follows: Landlord Defendants \$24,302.00; New Leaf Community Market, Inc. \$12,500.00.

6 **ENTIRE CONSENT ORDER**

7 10. This Consent Decree and Order, and **Attachment A** to this Consent Decree and
 8 Order, which is incorporated herein by reference as if fully set forth in this document, constitute
 9 the entire agreement between the signing parties, and no other statement, promise, or agreement,
 10 either written or oral, made by any of the parties or agents of any of the parties, that is not
 11 contained in this written Consent Decree and Order, shall be enforceable regarding the matters
 12 described herein.

13 **CONSENT DECREE AND ORDER**

14 **BINDING ON PARTIES AND SUCCESSORS IN INTEREST**

15 11. This Consent Decree and Order shall be binding on Plaintiff SEBASTIAN
 16 DEFRANCESCO and Defendants 2335 MISSION CENTER ONE, LLC, 2335 MISSION
 17 CENTER TWO, LLC, 2335 MISSION CENTER THREE, LLC, and 2335 MISSION CENTER
 18 FOUR, LLC, and any successors in interest and shall inure to the benefit of New leaf Community
 19 Markets, Inc. and its successors. The parties have a duty to so notify all such successors in interest
 20 of the existence and terms of this Consent Decree and Order during the period of the Court's
 21 jurisdiction of this Consent Decree and Order.

22 **MUTUAL RELEASE AND WAIVER OF CALIFORNIA CIVIL CODE SECTION 1542**

23 12. Each of the parties to this Consent Decree and Order understands and agrees that
 24 there is a risk and possibility that, subsequent to the execution of this Consent Decree and Order,
 25 any or all of them have incurred or will incur, suffer, or experience some further loss or damage
 26 with respect to the lawsuit and all matters alleged therein which are unknown or unanticipated at
 27 the time this Consent Decree and Order is signed by the parties. Except for all obligations
 28 required in this Consent Decree and Order, the parties intend that this Consent Decree and Order

1 apply to all such further loss with respect to the lawsuit and all matters alleged therein, except
 2 those caused by the parties subsequent to the execution of this Consent Decree and Order.
 3 Therefore, except for all obligations required in this Consent Decree and Order, this Consent
 4 Decree and Order shall apply to and cover any and all claims, demands, actions and causes of
 5 action by the parties to this Consent Decree and Order with respect to the lawsuit, whether the
 6 same are known, unknown or hereafter discovered or ascertained, and the provisions of Section
 7 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
 9 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
 10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
 11 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
 12 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 13 WITH THE DEBTOR.

14 13. Except for all obligations required in this Consent Decree and Order, each of the
 15 parties to this Consent Decree and Order, on behalf of their respective agents, representatives,
 16 predecessors, successors, heirs, partners and assigns, releases and forever discharges each other
 17 party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners,
 18 parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and
 19 representatives of each other party, from all claims, demands, actions, and causes of action of
 20 whatever kind or nature, presently known or unknown, arising out of or in any way connected
 21 with the lawsuit.

22 **TERM OF THE CONSENT DECREE AND ORDER**

23 14. This Consent Decree and Order shall be in full force and effect for a period of 12
 24 months after the date of entry of this Consent Decree and Order, or until the injunctive relief
 25 contemplated by this Order is completed, whichever occurs later. The Court shall retain
 26 jurisdiction of this action to enforce provisions of this Consent Decree and Order for 12 months
 27 after the date of this Consent Decree and Order, or until the injunctive relief contemplated by this
 28 Consent Decree and Order is completed, whichever occurs later.

SEVERABILITY

15. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES

Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts, and a facsimile signature shall have the same force and effect as an original signature.

NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

DATED: 9-10, 2009

By: 
Plaintiff SEBASTIAN DEFRANCESCO

DATED: _____, 2009

By: _____
Defendant MISSION CENTER ONE, LLC, by
GEORGE OW, JR., Trustee for the George Ow
Trust 1976

DATED: _____, 2009

By: _____
Defendant MISSION CENTER TWO, LLC, by
GEORGE OW, JR., Trustee for the Emily Ow
Trust 1976

SEVERABILITY

15. If any term of this Consent Decree and Order is determined by any court to be unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in full force and effect.

SIGNATORIES BIND PARTIES


Signatories on the behalf of the parties represent that they are authorized to bind the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts, and a facsimile signature shall have the same force and effect as an original signature.

NOW THEREFORE, IT IS HEREBY STIPULATED as follows:

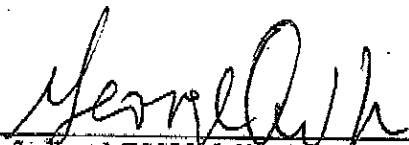
DATED: _____, 2009

By: _____
Plaintiff SEBASTIAN DEFRANCESCO

DATED: 9-16, 2009

By: 
Defendant MISSION CENTER ONE, LLC, by
GEORGE OW, JR., Trustee for the George Ow
Trust 1976

DATED: 9-16, 2009

By: 
Defendant MISSION CENTER TWO, LLC, by
GEORGE OW, JR., Trustee for the Emily Ow
Trust 1976

///

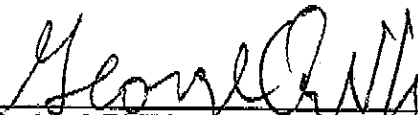
///

///

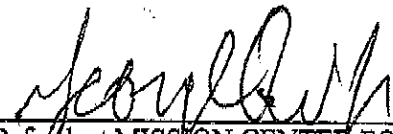
///

///

1 DATED: 9-16, 2009

2
3 By: 
4 Defendant MISSION CENTER THREE, LLC, by
5 GEORGE OW, JR., Trustee for the George Ow
Trust 1982

6 DATED: 9-16, 2009

7
8 By: 
9 Defendant MISSION CENTER FOUR, LLC, by
10 GEORGE OW, JR., Trustee for the Emily
Ow Trust 1982

11 DATED: _____, 2009

12
13 By: _____
14 Defendant NEW LEAF COMMUNITY
15 MARKETS, INC., by SCOTT ROSEN, its
CHIEF EXECUTIVE OFFICER

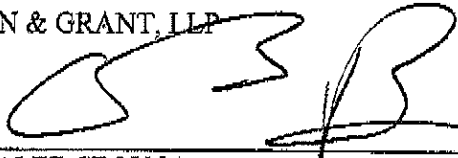
16 APPROVED AS TO FORM:

17 DATED: _____, 2009

18 LAW OFFICES OF PAUL L. REIN
19 LAW OFFICE OF JULIE OSTIL

20 By: _____
21 PAUL L. REIN
22 Attorneys for Plaintiff SEBASTIAN
DEFRANCESCO

23 DATED: 9/16, 2009

24 BASKIN & GRANT, LLP
25 By: 
26 CALEB SEQUOIA BASKIN
27 Attorneys for Defendants 2335 MISSION
CENTER ONE, LLC, 2335 MISSION CENTER
TWO, LLC, 2335 MISSION CENTER THREE,
LLC, and 2335 MISSION CENTER FOUR, LLC

1 DATED: _____, 2009

2

3

By:

Defendant MISSION CENTER THREE, LLC, by
GEORGE OW, JR., Trustee for the George Ow
Trust 1982

5

6 DATED: _____, 2009

7

8

By:

Defendant MISSION CENTER FOUR, LLC, by
GEORGE OW, JR., Trustee for the Emily
Ow Trust 1982

10

11 DATED: _____, 2009

12

13

By:

Defendant NEW LEAF COMMUNITY
MARKETS, INC., by Scott Rosen, its CHIEF
EXECUTIVE OFFICER

15

16 APPROVED AS TO FORM:

17 DATED: 9/15, 2009

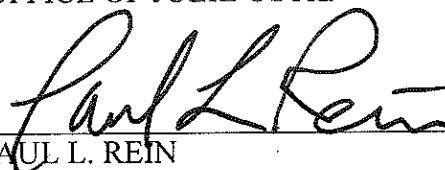
18

19

LAW OFFICES OF PAUL L. REIN
LAW OFFICE OF JULIE OSTIL

20

By:


PAUL L. REIN
Attorneys for Plaintiff SEBASTIAN
DEFRANCESCO

21

22

DATED: _____, 2009

23

BASKIN & GRANT, LLP

24

25

By:

CALEB SEQUOIA BASKIN
Attorneys for Defendants 2335 MISSION
CENTER ONE, LLC, 2335 MISSION CENTER
TWO, LLC, 2335 MISSION CENTER THREE,
LLC, and 2335 MISSION CENTER FOUR, LLC

26

27

28

1 DATED: _____, 2009

3 By:

Defendant MISSION CENTER THREE, LLC, by
GEORGE OW, JR., Trustee for the George Ow
Trust 1982

6 DATED: _____, 2009

8 By:

Defendant MISSION CENTER FOUR, LLC, by
GEORGE OW, JR., Trustee for the Emily
Ow Trust 1982

11 DATED: 9/14 _____, 2009

13 By:

Defendant NEW LEAF COMMUNITY
MARKETS, INC., by SCOTT ROSEN, its
CHIEF EXECUTIVE OFFICER

16 APPROVED AS TO FORM:

17 DATED: _____, 2009

LAW OFFICES OF PAUL L. REIN
LAW OFFICE OF JULIE OSTIL

20 By:

PAUL L. REIN
Attorneys for Plaintiff SEBASTIAN
DEFRANCESCO

23 DATED: _____, 2009

BASKIN & GRANT, LLP

25 By:

CALEB SEQUOIA BASKIN
Attorneys for Defendants 2335 MISSION
CENTER ONE, LLC, 2335 MISSION CENTER
TWO, LLC, 2335 MISSION CENTER THREE,
LLC, and 2335 MISSION CENTER FOUR, LLC

1 DATED: Sept 14, 2009

NEWMAN & MARCUS, A LAW CORPORATION

2
3 By: 

4 EDWARD M. NEWMAN
5 Attorneys for NEW LEAF COMMUNITY
6 MARKETS, INC.

7 **ORDER**

8 Pursuant to stipulation, and for good cause shown,

9 **IT IS SO ORDERED:**

10 DATED: 9/16/09, 2009

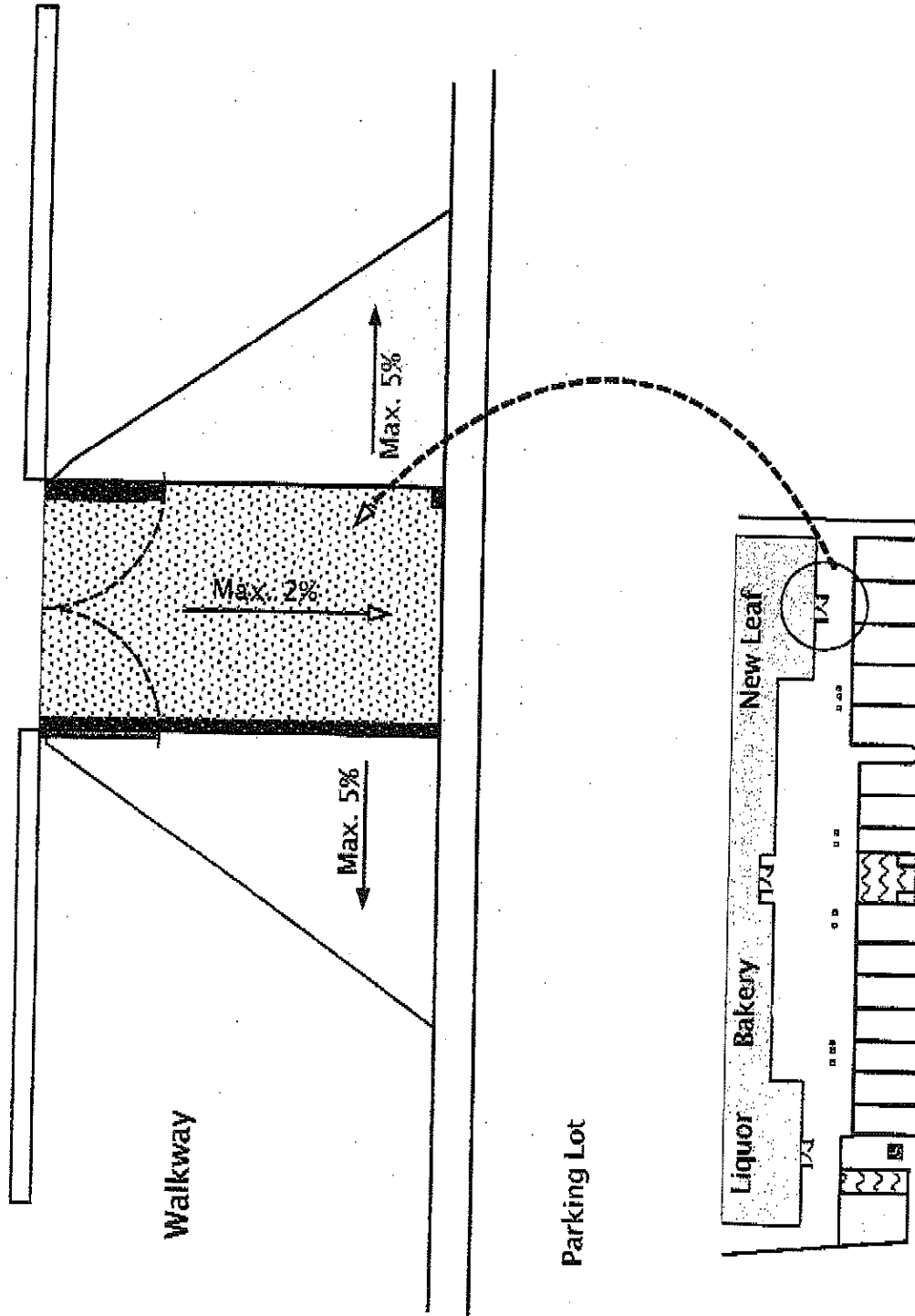
11
12 

13 SUSAN ILLSTON
14 UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

- A. Walkway from Building-1 to Mission St. Sidewalk**
 - A-1: Install handrails on both sides of the walkway where the slope exceeds 5%.
- B. Built-up Curb Ramp at East End of Building-1 (stamped concrete in front of Liquor Store)**
 - B-1: Remove curb ramp and pave back flush with existing parking lot
- C. Walkway from Building-2 to Mission St. Sidewalk (east end of walkway)**
 - C-1: Provide edge protection along north side of ramp, using either Option 1 or 2.
 - Option 1: Leave the existing rolled edge and install a guardrail
 - Option 2: Remove existing rolled edge and install flared side at maximum 10% slope
 - C-2: Install detectable warning where the route enters traffic lane of parking lot
- D. Walkway from Building-2 to Mission St. Sidewalk (west end of walkway)**
 - D-1: Rebuild the ramped portion of the walkway at maximum 8.3% slope
 - D-2: Provide edge protection along north side of ramp
 - Option 1: Leave the existing rolled edge and install a guardrail
 - Option 2: Remove existing rolled edge and install flared side at maximum 10% slope
 - D-3: Install detectable warning where the route enters traffic lane of parking lot
- E. Curb Ramp at North End of Walkway that Crosses Parking Lot between Buildings 1 and 2**
 - E-1: Rebuild the curb ramp at maximum 8.3%
 - E-2: Install detectable warning on the bottom portion of the ramp
- F. Curb Ramp at South End of Walkway that Crosses Parking Lot between Buildings 1 and 2**
 - F-1: Install detectable warning where the route enters traffic lane of parking lot
- G. Walkway In Front of Former New Leaf/Building-1 (See Drawing "New Leaf Cross-slope")**
 - G-1: Over an area as wide as the paired exit doors, maintain a maximum slope of 2% in the direction perpendicular to the building, and extending to the curb.
 - G-2: Using a maximum 5% slope in the direction parallel to the curb, transition the change of level that will result between the new 2% area (created by G-1) and the existing walkway.
- H. Curb Ramp at West End of Building-1**
 - H-1: Remove "built-up" asphalt ramp that projects into the parking lot
 - H-2: Install new curb ramp that is integral to the raised walkway
 - H-3: Install detectable warning on the bottom portion of the ramp
 - H-4: Provide edge-protection along the edge of the new curb ramp that is not bounded by the building, by installing either option 1 or 2.
 - Option 1: Guardrail
 - Option 2: Flared side
- I. Pedestrian Walkway Into the Facility - Arrival Point from the McPherson St.**
 - I-1: Paint a 4-ft wide walkway from the arrival point to the curb ramp at Item-H described above.
 - I-2: Install detectable warning where the route enters traffic lane of parking lot
 - I-3: Install directional sign (containing symbol of access and an arrow) that points to the curb ramp at Item-H.
- J. Tree Wells Pose Abrupt Changes of Level in Walkway**
 - J-1: Fill the tree wells with a porous material such as 3/4" rocks, or install factory-made grate coverings
- K. Accessible Parking**
 - K-1: Install 3 accessible parking spaces of which 1 must be van-accessible, per Option 1, 2, or 3
 - Option 1 (See Remediation Plan with Parking Option 1)
 - Building-1: Two regular accessible spaces that share 5-ft access aisle and a conventional curb ramp.
 - Building-2: One van-accessible space with 8-ft access aisle and a "Case-C curb ramp" that has a guardrail at the sides of the curb ramp that abut the walkway.
 - Option 2 (See Remediation Plan with Parking Option 2)
 - Building-1: Two regular accessible spaces that share 5-ft access aisle and a "Case-C curb ramp" that has a guardrail at the sides of the curb ramp that abut the walkway.
 - Building-2: One van-accessible space with 8-ft access aisle and a "Case-C curb ramp" that has a guardrail at the sides of the curb ramp that abut the walkway.
 - Option 3 (See Remediation Plan with Parking Option 3)
 - Building-1: One regular and one van-accessible space that share an 8-ft access aisle and a conventional curb ramp
 - Building-2: One regular accessible space with a 5-ft access aisle and a "Case-C curb ramp" that has a guardrail at the sides of the curb ramp that abut the walkway.

Former New Leaf Market - Exit Door



Remediation Plan Item G
New Leaf Cross-Slope

